

Comments on December 6, 2012 Planning Commission Agenda Items

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Item No. 1 Minutes of November 8, 2012

It is a continuing puzzle to me why, in the listing of “*Staff Present*,” the name of the administrative assistant playing the role of secretary is not recognized, in this case Ruby Garciamay. She seems like one of the most essential persons present for proper functioning of the meeting, and perhaps for preparation of the minutes.

Regarding the Planning Commission’s system of recording votes on motions (both in the minutes and in its resolutions) in terms of “ayes” and “noes,” the Commission may wish to know that as a result of changes to City Charter Section 410 approved by voters on November 6, it is possible the City Clerk may be changing to a system of “ayes” and “nays.” Since that is grammatically incorrect, contrary to the City’s practice since its inception, and not binding on the Planning Commission, I recommend the Commission stick with its present system.

At the top of page 3, the reporting of a Substitute Motion that “*failed for lack of a second*” and an Amended Motion that passed unanimously is confusing, since they appear to be identical. Was there any difference between the two motions?

Item No. 2 Goldenrod Variance (PA2012-126)

In the proposed resolution of approval:

- With regard to *Section 3*, required *Finding B* (handwritten page 14), it seems to me there is a problem with the Zoning Code rather than anything unusual about the circumstances of this particular property. That is, strict compliance with the current Code denies the owner rights enjoyed by other similarly-situated owners (half-size, non-alley lots) only on the assumption those other owners will be granted similar variances. If such variances are routinely required to achieve the desired planning results, it would seem to me the code should be modified to dictate the desired result without a need for variances.
 - I also find the staff report unconvincing as to why the required setback from a rear property line should be no greater than the required setback from a rear alley. I would assume the presence of an alley enforces an additional separation between the dwellings that is not present when there is no alley. Instead, the issue here, as noted in Facts in Support of Finding F-5, seems more to be that this is a corner lot, so the proposed home has either no “rear” or two “rears.”
 - On the other hand, a corner home also presents two “fronts” to the public, and allowing only a 3 foot setback along the southerly property line (fronting Bayview Drive) already seems a substantial concession.
- With regard to *Fact in Support of Finding C-3* (handwritten page 14), the fact that application of the additional third floor setback requirement results in what the planner regards as an unusable third floor area does not, to my mind, lead to the conclusion that the requirement needs to be modified. Perhaps the Code is properly suggesting that a third floor is inappropriate for a lot of these dimensions?
- With regard to *Exhibit “A” Conditions of Approval* (handwritten page 19):
 - I find Condition 4 (that approval from the California Coastal Commission will be required) surprising. From the satellite photos this residence does not appear to be in the first row of homes facing the ocean. Is it not in the Categorical Exclusion Zone?
 - In Condition 10 there is a typo: “upgraded to ~~by~~ be ADA compliant.”

Item No. 3 Plaza Corona del Mar (PA2010-061)

- There is a discrepancy between the staff report heading, which says it deals with *Variance No. VA2012-002*, and the recommended action on page 3 (handwritten page 5), which refers to *Variance No. VA2012-007*. Judging from the resolution starting on handwritten page 25, the former designation is correct.
- With regard to the vacated alley mentioned in the second sentence under *Introduction -- Project Setting*, the last portion of this, immediately behind Gallo's, was vacated by order of the City Council at its November 27 meeting, with portions being "accepted" by the applicant and the residential property owner to the north. Since that portion of undeveloped alleyway is indicated as City property on the City's GIS mapping service, and since taxpayers received no compensation, questions were raised at that meeting as to who owned the property and whether the "vacation" gave the recipients additional property rights (for example, by physically giving them property or by moving the lines from which setbacks are measured). The City's Public Works Director asserted that in this case the land already belonged to the neighbors and that all that was being vacated was a transportation easement, rather than land owned by taxpayers "in fee," but there was nothing in the Council staff report from which the public could confirm that interpretation. In addition, testimony as to whether setback lines were moving was ambiguous. Although somewhat off-topic for the present Planning Commission hearing, I think it would be helpful for the public to be better informed as to what the "vacation" of the alley (both the part ceded on Nov. 27 and the larger portion previously vacated) entailed, and whether it changed property lines or otherwise afforded new development rights to the adjacent property owners. The vacated alley depicted in the staff report might, for example, have provided part of a convenient bike trail around the commercial district, and it seems unlikely the new "owners" would be likely to return it to the City without compensation. Since the PC staff report repeatedly refers to "consolidation" of the vacated alley with the existing lots it sounds like the alley was not formerly part of them.
- Page 8 (handwritten page 9) appears to have a typo near the top: "*The intent of the ~~CC~~ CC zoning district is...*"
- Page 12 (handwritten page 14) has a typo: "*for shared use between the ~~both the~~ commercial and residential components*"
- Regarding the request for the modification permit necessary to build the desired 17 foot tall retaining wall, as noted on page 15 (handwritten page 17), Zoning Code Section 20.30.040 favors stepped walls, with no portion taller than 8 feet and spread over an average grade of around 45°. It is unclear from the Code that this preference is based solely on aesthetics (as the staff report implies), and does not include safety/stability considerations. Is a 17 foot tall vertical wall really safe? And is the loss of 6 feet horizontally that critical to the project?
- Page 17 (handwritten page 19) has a typo: "*If the subject property ~~would~~ were allowed a similar 1.75 floor area limit,...*"
- The traffic noise exposure level of 72.5 dB CNEL for the residential facades nearest to East Coast Highway (cited on page 18) seems very high, and argues against reducing the default setback.

Regarding the Draft Resolution of Approval:

- On page 10 (handwritten page 34), the wall and “secured gate” makes it sound slightly improbable that the shared parking area would be convenient to casual guests of the residents, and more likely it would be used to store excess resident-owned vehicles. At the same time, the lack of dedicated stalls provides no guarantee the planned amount of parking will be available for the commercial use.
- There is a typo at the top of page 16 (handwritten page 34): “and resulting floor ~~are~~ area limit ...”
- Page 19 (handwritten page 43) contains a possible typo: “The subject property has been ~~placed~~ improved (or modified ?) with a significant amount of fill ...”
- The expansive soils problem mentioned just after this does not seem to be addressed elsewhere in the staff report, resolution or conditions of approval.
- The assurance under *Facts in Support of Finding C-1* on page 20 (handwritten page 44) that “the project would not require discharge of **fill**” into Buck Gully (apparently taken from the report on handwritten page 115, and referring to the federal regulation cited on handwritten page 109) seems odd since a “discharge” of **fill dirt** seems unlikely, while project-related discharges of **water** (or waste) seem much more likely both to occur (see handwritten page 112 and Conditions of Approval 24, 25, 53 and 54) and to have environmental consequences.
- There are at least two typos on page 21 (handwritten page 45) in reporting “Facts” (as opposed to “Findings”):
 - “E-1. ~~That the~~ The design of the development ...”
 - “E-2. ~~That public~~ Public improvements will be required ...”
- In Section 4 (Decision), Item 3: the requirement of NMBC Section 19.12.050.1.2. seems to be that an appeal regarding the Planning Commission’s action on the Tentative Tract Map be filed with the **City Clerk** (rather than with the **Director of Community Development** as stated in the resolution). It might also be noted that in Title 19, references to the Zoning Code do not seem to have been updated to reflect the Zoning Code adopted in 2010.
- In the *Conditions of Approval* (starting on handwritten page 49):
 - Condition 7: “shall be paid in accordance with City Council...” (beyond which the reference to a Council Resolution being a part of the Municipal Code is confusing)
 - Condition 12: “shall not result in glare as viewed from the ~~residents~~ residences above” or “shall not result in glare as viewed ~~from by~~ the residents above.”
 - Condition 14: “shall be available for use by guest quests of the residential tenants” (apparently the residents themselves are not allowed to park there?)
 - Condition 15 (“All employees of the commercial building are required to park on site.”) How is this supposed to work if places aren’t available?
 - Condition 16: Is “passenger vehicles” understood to include anything used as personal transportation by an employee or guest? And what about service vehicles that are not “delivery trucks”?
 - Condition 17: If a future business tenant has a work-related vehicle why are they not allowed to park it overnight? And where are they supposed to park it?
 - Condition 18: “... approved as to form by the City Attorney’s Office, ...”
 - Condition 26: A reference seems required to explain what a “lighting value” of “1” is (as an optical engineer, it is not obvious to me).

- Condition 28: “All trash shall be stored within the ~~building~~ buildings (?) or within dumpsters stored in the trash enclosure” -- is this meant to apply to the residential lot (it appears so per Condition 31)? Or only to the commercial one? Will the residents be allowed additional outside trash options?
- Condition 31: Is this meant to refer to the “certificate of occupancy or final of building permits” for the commercial lot? Or the residential one? Will the “future homeowners association” necessarily exist when the commercial building is completed?
- Condition 36: the grammar is ambiguous. Is this meant to imply storage outside the buildings is OK as long as it's not “in the front or at the rear” (that is, sides are OK)? Or that “in the front or at the rear of the property” is a prohibited area separate and distinct from “outside of the buildings”?
- Condition 37: “~~The issues~~ Issues with regard to the control of smoke and odor...”
- Condition 42: “Fire flow shall be provided in accordance with N.B.F.D. Guideline B.01 “Determination of Required Fire Flow.”
- Condition 52: Why is a 30-minute idling period allowed for trucks and heavy equipment? What purpose does this serve? In recent projects the City Council has imposed a 5-minute idling limit.

Regarding the Draft Resolution for Denial

- On page 2 (handwritten page 62): under “Decision,” shouldn't there be a clause 3 specifying the different process for appeal of a decision of denial regarding the Tentative Tract Map?

Item No. 4 Port Theater Alcohol Service (PA2012-070)

- *Project Summary* (page 1):
 - I believe this enterprise operates under the name “*The New Port Theater*” rather than “*Port Theater*.” At Tuesday evening’s Parks, Beaches and Recreation Commission hearing it was abbreviated “TNT”.
 - This item has been reported in the media as a request to serve wine and beer in the theater. However, the Project Description on page 3 (handwritten page 5) suggests a “*Type 47 (On-Sale General) Alcoholic Beverage Control License*” is not restrictive and allows service of “*beer, wine, and liquor*.”
- On page 5 (handwritten page 7): “*The nearest church, Our Lady of Mount Carmel Church, is located 375 feet to the northeast on Heliotrope Avenue across East Coast Highway.*” Is this correct? I thought the church of that name was far away to the west, on the Balboa Peninsula.

In the *Draft Resolution for Approval*:

- On page 1 (handwritten page 13), Item 2. Again I think the name of the establishment is “*The New Port Theater*” rather than “*Port Theater*.”
- On page 3 (handwritten page 15), first unnumbered paragraph, the same comment as above regarding “*Our Lady of Mount Carmel Church*.”
- On page 5 (handwritten page 17), in connection with Fact 2 in Support of Finding E, I assume the current permit is in addition to some other existing permit governing the theater use? If not, I see nothing in the present Conditions of Approval ensuring “*The establishment will comply with all Building, Public Works, and Fire Codes. All ordinances of the City and all conditions of approval will be complied with.*”
- On page 6 (handwritten page 18), Fact 2 seems irrelevant to Finding F.
- Regarding the *Conditions of Approval* starting on page 8 (handwritten page 20):
 - Condition 9: Does this mean access to the second level mezzanine will be *permanently* restricted to patrons 21 years of age or older? Or only when alcohol service is taking place? (per handwritten page 35, the applicants’ understanding seems to be the latter, but the condition is not clear)
 - Condition 10: This seems to be a largely redundant restatement of Condition 9 with slightly different wording. Note that the proposed conditions regarding the lower level theater in both are significantly different from those requested by the applicant which (per handwritten page 36) would have allowed patrons 21 and over to order drinks to be delivered from the mezzanine.
 - Condition 12: This would seem to allow someone who is not an owner, manager or employee to sell alcohol without training.
 - Condition 18: What is the phrase “*at public events*” meant to signify? Can the applicant “lease” out the venue for a private night-club like event with dancing? Or is that barred by Condition 16? Or can the applicant himself hold such events if entry is in some way limited and not open to the general public?
 - Condition 24: same comment as for Condition 36 of the Plaza Corona del Mar permit (Agenda Item No. 3).
 - Condition 25: “*include including any form of on-site media broadcast*”
 - Several of the Police Department’s recommended conditions of approval, including (on handwritten page 20) their numbers 9 (no “happy hours”), 11 (no

alcohol related “games”) and 14 (possibility of dancing with Special Event Permit) do not seem to have been incorporated into the Conditions being presented to the Planning Commission.